

Timothy J. Silverman, Esq. [SBN 145264]
SOLOMON, GRINDLE, SILVERMAN & WINTRINGER
A Professional Corporation
12651 High Bluff Drive, Suite 250
San Diego, California 92130
Telephone: (858) 793-8500
Facsimile: (858) 793-8263

Attorneys for Lessor
FINANCIAL SERVICES VEHICLE TRUST

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re:

KREISS ENTERPRISES, INC.

Debtor,

FINANCIAL SERVICES VEHICLE TRUST,

Movant,

-vs-
KREISS ENTERPRISES, INC.

Respondents.

Case No: 2:13-bk-21466-NB

Chapter 11

**DECLARATION OF TIMOTHY J.
SILVERMAN IN SUPPORT OF
ORDER GRANTING MOTION FOR
RELIEF FROM THE AUTOMATIC
STAY RE NON-COMPLIANCE WITH
ORDER GRANTING BMW BANK OF
NORTH AMERICA ADEQUATE
PROTECTION**

Honorable Neil Baton

I, Timothy J. Silverman, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California, including this court. I am a shareholder with the law firm of Solomon, Grindle, Silverman & Wintringer, attorneys of record for Secured Creditor FINANCIAL SERVICES VEHICLE TRUST ("FSVT").

///

///

2. I have personal knowledge of all facts contained in this declaration, and if called as a witness, would and could testify competently thereto.

3. Pursuant to its rights as a lessor, FSVT filed with this Court a Motion For Relief From Automatic Stay to permit foreclosure of its lien upon personal property described as a 2103 BMW 528i, VIN No. WBAXG5C54DDY30832.

4. In resolution of the disputes between FSVT and the Debtor, on August 26, 2013, the Court entered an Order Approving Stipulation for Adequate Protection. A true and correct copy of the Order is attached hereto, marked Exhibit "1", and incorporated herein by this reference.

5. The Order required the Debtor to resume making monthly contractual payments to FSVT as well as payments to cure the post-petition arrearages which existed at that time. If the Debtor becomes 14 days late, FSVT may send a demand letter to the Debtor to cure the delinquency.

6. On or about January 10, 2014, Debtor's counsel contacted me to arrange for the surrender of the vehicle back to FSVT. A true and correct copy of the email dated January 10, 2014, is attached hereto, marked Exhibit "2", and incorporated herein by this reference. It is my understanding that the vehicle was surrendered to FSVT on January 14, 2014.

7 In that the Debtor has no intent to proceed under the Order for Adequate Protection and has surrendered the vehicle to FSVT, FSVT requests that full relief from stay be granted to allow it to sell the vehicle. There is no longer a need for an ongoing Order between the parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 3rd day of February, 2014, at San Diego, California



Timothy J. Silverman, Esq.

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Timothy J. Silverman [SBN 145264] SOLOMON GRINDLE SILVERMAN & WINTRINGER A Professional Corporation 12651 High Bluff Drive, Suite 250 San Diego, CA 92130 Telephone: 858-793-8500 Facsimile: 858-793-8263 Tim@sgswlaw.com	FOR COURT USE ONLY <div style="border: 1px solid black; padding: 10px; text-align: center;"> FILED & ENTERED AUG 26 2013 <small>CLERK U.S. BANKRUPTCY COURT Central District of California BY walter DEPUTY CLERK</small> </div>
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION	
In re: KREISS ENTERPRISES, INC. <div style="text-align: right;">Debtor(s).</div>	CASE NO.: 2:13-bk-21466-NB CHAPTER: 11 <div style="border: 1px solid black; padding: 5px; text-align: center;"> ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (PERSONAL PROPERTY) </div> DATE: September 10, 2013 TIME: 10:00 a.m. COURTROOM: 1545 PLACE: 255 East Temple, Los Angeles, CA
Movant: FINANCIAL SERVICES VEHICLE TRUST	

1. The Motion was: ☐ Opposed ☐ Unopposed ☒ Settled by stipulation

2. The Motion affects the following personal property (Property):

☒ Vehicle (describe year, manufacturer, type and model): 2013 BMW 528i

Vehicle identification number: WBAXG5C54DDY30832

Location of vehicle (if known): Debtor's Possession

☐ Equipment (describe manufacturer, type, and characteristics):

Serial number(s): _____

Location (if known): _____

☐ Other Property (*describe type, identifying information, and location*):

☐ See Exhibit _____ attached to this Order.

3. The Motion is granted under: ☐ 11 U.S.C. § 362 (d)(1) ☐ 11 U.S.C. § 362(d)(2)

4. As to the Movant, its successors, transferees and assigns, the stay of 11 U.S.C. § 362(a) is:

- a. ☐ Terminated as to Debtor and Debtor's bankruptcy estate.
- b. ☐ Annulled retroactively to the date of the bankruptcy petition filing.
- c. ☒ Modified or conditioned as set for the in Exhibit A to this Order.

5. ☐ Movant may enforce its remedies to repossess or otherwise obtain possession and dispose of the Property in accordance with applicable nonbankruptcy law, but may not pursue any deficiency claim against the Debtor or property of the estate except by filing a Proof of Claim pursuant to 11 U.S.C. § 501.

6. ☐ Movant must not repossess the Property before the following date (*specify*): _____

7. ☒ The stay remains in effect subject to the terms and conditions set forth in the Adequate Protection Attachment to this Order.

8. ☐ In chapter 13 cases, the trustee must not make any further payments on account of Movant's secured claim after entry of this Order. The secured portion of Movant's claim is deemed withdrawn upon entry of this Order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the trustee any payments received from the trustee on account of Movant's secured claim after entry of this Order.


9. This Order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

10. This court further orders as follows:

- a. ☐ The 14-day stay provided by FRBP 4001(a)(3) is waived.
- b. ☐ The provisions set forth in the Extraordinary Relief Attachment shall also apply (*attach Optional Form F 4001-1O.ER*).
- c. ☒ See attached continuation page for additional provisions.

###

Date: August 26, 2013



Neil W. Bason
United States Bankruptcy Judge

ADEQUATE PROTECTION ATTACHMENT*(This attachment is the continuation page for paragraph 7 of the Order on the Motion.)*

The stay remains in effect subject to the following terms and conditions:

1. ☐ The Debtor tendered payments at the hearing in the amount of \$ _____.
2. ☒ The Debtor must make regular monthly payments in the sum of \$ 729.96 commencing 8/28/13.
The amount of these payments may be subject to change under the terms of the parties' original agreements. All payments due Movant hereunder shall be paid to Movant at the following address:

BMW Financial Services NA, LLCP.O. Box 3608Dublin, OH 43016

3. ☒ The Debtor must cure the postpetition default computed through 8/20/13 in the amount of \$ 1,459.92 as follows:
- a. ☐ In equal monthly installments of \$ _____ each commencing _____ and continuing thereafter through and including _____.
- b. ☒ By paying the sum of \$ 1,459.92 on or before 8/28/13.
- c. ☐ By paying the sum of \$ _____ on or before _____.
- d. ☐ By paying the sum of \$ _____ on or before _____.
- e. ☐ Other:
4. ☒ The Debtor must maintain insurance coverage on the property and must remain current on all taxes that fall due postpetition with regard to the property.
5. ☐ The Debtor must file a Disclosure Statement and Plan on or before (specify date): _____
The Disclosure Statement must be approved on or before (specify date): _____
The Plan must be confirmed on or before (specify date): _____
6. ☒ Upon any default in the foregoing terms and conditions, Movant must serve written notice of default to Debtor, and any attorney for Debtor. If Debtor fails to cure the default within 14 days after service of such written notice, plus 3 additional days if served by mail:
- a. ☐ The stay automatically terminates without further notice, hearing or order.
- b. ☒ Movant may file and serve declaration under penalty of perjury specifying the default, together with a proposed order terminating the stay, which the Court may grant without further notice or hearing.
- c. ☐ The Movant may move for relief from the stay upon shortened notice in accordance with the LBRs.
- d. ☐ The Movant may move for relief from the stay on regular notice.

7. ☒ Notwithstanding anything contained herein to the contrary, the Debtor shall be entitled to a maximum (*number*) of 3 notices of default and opportunities to cure pursuant to the preceding paragraph. Once a Debtor has defaulted this number of times on the obligations imposed by this Order and has been served with this number of notices of default, Movant is relieved of any obligation to serve additional notices of default and provide additional opportunities to cure. If an event of default occurs thereafter, Movant shall be entitled, without first serving a notice of default and providing the Debtor with an opportunity to cure, to file and serve a declaration under penalty of perjury setting forth in detail the Debtor's failures to perform hereunder, together with a proposed order terminating the stay, which the court may enter without further notice of hearing.
8. ☒ The foregoing terms and conditions are binding only during the pendency of this bankruptcy case. If, at any time, the stay is terminated with respect to the Property by court order or by operation of law, the foregoing terms and conditions cease to be binding and Movant may proceed to enforce its remedies under applicable nonbankruptcy law against the Property and/or against the Debtor.
9. ☒ If Movant obtains relief from stay based on Debtor's defaults hereunder, the order granting that relief will contain a waiver of the 14-day stay as provided in FRBP 4001(a)(3).
10. ☒ Movant may accept any and all payments made pursuant to this Order without prejudice to or waiver of any rights or remedies to which it would otherwise have been entitled under applicable nonbankruptcy law.
11. ☐ Other (*specify*):

4

Dated: 8/20/13

SOLOMON GRINDLE SILVERMAN & WINTRINGER, APC

/s/ Timothy J. Silverman

By: _____
Timothy J. Silverman, Esq.
Attorneys for Financial Services Vehicle Trust

Dated: 8/22/2013

LEVENE, NEALE, BENDER, YOO & BRILL, L.L.P.

[Docket No. ____]
By: _____
Juliet Y. Oh, Esq.
Attorneys for Debtor



5

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled: **ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (PERSONAL PROPERTY) (Settled by Stipulation)** was entered on the date indicated as **Entered@** on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) ^B Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (date) August 23, 2013, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

Timothy J. Silverman, Esq.
United States Trustee
Juliet Y. Oh, Esq.
Dare Law

tim@sgswlaw.com
ustpreion16.la.ecf@usdoj.gov
jyn@lnbyb.com
dare.law@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses stated below:

Debtor
Kreiss Enterprises, Inc.
8619 Melrose Avenue
West Hollywood, CA 90069

☐ Service information continued on attached page

3. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an **Entered@** stamp, the party lodging the judgment or order will serve a complete copy bearing an **Entered@** stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

☐ Service information continued on attached page

6

From: Lindsey L. Smith [mailto:LLS@lnbyb.com]
Sent: Friday, January 10, 2014 3:51 PM
To: Tim Silverman
Cc: Martin J. Brill; Missy Kresl; Juliet Y. Oh
Subject: RE: 2:13-bk-21466-NB Notice of Lodgment

Tim,

As a follow up to the voicemail I just left you, as you may recall, we represent Kreiss Enterprises, Inc. (the "Debtor") in its pending Chapter 11 Bankruptcy. Based on the motion for relief from stay that you filed on behalf of Financial Services Vehicle Trust (which was resolved), I understand that you represent Financial Services Vehicle Trust in connection with the Debtor's case. The Debtor would like to surrender the vehicle to your client. Please let me know to where I should tell my client to take the vehicle to be surrendered.

Thanks.

LINDSEY L. SMITH, Esq.
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067
Phone 310 229 1234 | Fax 310 229 1244
lls@lnbyb.com | www.lnbyb.com

The preceding E-mail message is subject to Levene, Neale, Bender, Yoo & Brill L.L.P.'s email policies which can be found at <http://www.lnbyb.com/disclaimers.htm>.



Please consider the environment before printing this email

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

12651 High Bluff Drive, Suite 250
San Diego, California 92130

A true and correct copy of the foregoing document entitled (*specify*):

DECLARATION OF TIMOTHY J. SILVERMAN IN SUPPORT OF ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY RE NON-COMPLIANCE WITH ORDER GRANTING BMW BANK OF NORTH AMERICA ADEQUATE PROTECTION

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) February 4, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 4, 2014

Date

Missy Kresl

Printed Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re Kreiss Enterprises, Inc.

Central District Bankruptcy Court Case No. 2:13-bk-21466-NB

SERVICE LIST

Debtor

Kreiss Enterprises, Inc.
8619 Melrose Avenue
West Hollywood, CA 90069

Attorney for Debtor

Martin J. Brill, Esq.
Juliet Y. Oh, Esq.
Lindsey L. Smith, Esq.
Levene, Neale, Bender, et al.
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067

U.S. Trustee

United States Trustee
915 Wilshire Blvd., Suite 1850
Los Angeles, CA 90017

Attorney for U.S. Trustee

Dare Law
725 S. Figueroa Street, 26th Floor
Los Angeles, CA 90017

Chamber Copy

Honorable Neil W. Bason
United States Bankruptcy Court
Central Division
255 East Temple Street, Courtroom 1545
Los Angeles, CA 90012

20 LARGEST UNSECURED CREDITORS

Robert J. Gowing
1707 Lake Arbor Drive
El Lago, TX 77586

RC Furniture
1111 S. Jellick Avenue
Industry, CA 91748

El Paseo Enterprises, LLC
P.O. Box 16630
Missoula, MT 59808-6630

LDC Partners
Unit F
Dept. LA 23329
Pasadena, CA 91185-3329

Gainey Village Retail Center
Shops at Gainey Village
P.O. Box 310290
Prop 251510
Des Moines, IA 50331-0290

Camino Santa Fe Investment, LLC
6749 Top Gun Street, Suite 104
San Diego, CA 92121

Juan Jose Danzos
Marso Home Collection
7509 Girard Avenue
La Jolla, CA 92037

Mehitabel, Incorporated
Plant 1 - Sanson Road
LAHUG
Cebu City 6000
Philippines

Mark & Erika
Kiesel/Lowe
22 Cherry Hills Lane
Newport Beach, CA 92660

Penn Residence
1580 Stone Canyon
Los Angeles, CA 90077

WMCV Phase 3 LLC
c/o Bank of America
File 749026
Los Angeles, CA 90074-9026

Mercato, LLP
NW 584319
P.O. Box 1450
Minneapolis, MN 55485-5843

Mark Ono
31018 Marne Drive
Rancho Palos Verdes, CA 90275

Torrey Pines Property Management
7858 Ivanhoe Avenue
La Jolla, CA 92037

Enkeboll, Inc.
16506 Avalon Blvd.
Carson, CA 90746

Crocker Downtown Development
SDS 12-2563
P.O. Box 86
Minneapolis, MN 55486-2563

Gary & Joni Kawaguchi
13441 Montecito
Tustin, CA 92782

TSLV, LLC
25567 Network Place
Chicago, IL 60673-1255

Richard MacDonald
16 Lower Ragsdale Drive
Monterey, CA 93940

Marge Carson, Inc.
1260 E. Grand Avenue
Pomona, CA 91766